

1           A     I recall the power, that one was around 100 watts  
2 and the other one was around 76 watts.

3           Q     Do you remember which was which?

4           A     I think the one in Charleston was 100 and the other  
5 one in, in Huntington was 76. The general -- the Charleston  
6 site was located in a room in a building where there were  
7 other transmitters, but, you know, the general condition of,  
8 of the wiring and the way things were connected was -- they  
9 weren't -- things weren't dressed down very well, wire, you  
10 know, wires were hanging and some power lines looked like they  
11 might have been exposed and easy to bump into them. The other  
12 site, I think, was, was neater. The only thing I noted there,  
13 I guess the licensee was permitted 350 watts and the transmit-  
14 ters were, you know, pretty -- not capable of that.

15          Q     After you left the inspection with Capitol, did you  
16 hear any more of the test transmissions on the frequency?

17          A     No. I mean, we left town Friday. But, you know,  
18 from Thursday -- we sort of monitored Thursday afternoon,  
19 evening, and, and Friday and didn't hear any further testing.

20               MS. FOELAK: That's all I have.

21               MR. JOYCE: Mr. Joyce?

22                               CROSS-EXAMINATION

23               BY MR. JOYCE:

24          Q     Mr. Walker, I gather at the -- at that meeting at  
25 Capitol's offices the Capitol folks never brought up any

1 | mention of a Three-Minute Rule with you? Is that correct?

2 |       A     Not that I recall, no.

3 |       Q     And was RAM doing the, the same thing as Capitol?

4 | You said that you were monitoring both RAM and Capitol.

5 | Capitol was transmitting --

6 |       A     Well --

7 |       Q     -- the sequential tones. Was RAM doing the same  
8 | thing?

9 |       A     No. RAM seemed to be, you know, serving customers,  
10 | whereas all the pages from Capitol were the same pagers and  
11 | were, you know, not to subscribers or customers. As far as  
12 | coming on the air while the other was on the air already, RAM,  
13 | during our inspection, showed us that they deliberately had  
14 | set their equipment so that if they were not able to get on  
15 | the air for two minutes and they had pages backed up that they  
16 | would come on the air and deliver their pages to their custom-  
17 | ers anyway. At Capitol, on the other hand, we never got an  
18 | explanation why their transmitter came on top of RAM's trans-  
19 | mitter. In looking at the busy monitor at Capitol, I noticed  
20 | that the signal that the receiver was supposed to use to let  
21 | them know that RAM was on the air was very noisy, and I had  
22 | doubts whether sometimes, because of that, maybe the reason  
23 | that they came up on top of RAM was the fact that the monitor  
24 | wasn't getting a clear signal from RAM to know that they were  
25 | on the air, which is something mentioned in that April the

1 10th letter from RAM's people. That sort of confirms what  
2 that letter stated as far as the busy monitor.

3 Q But, but you testified, Mr. Bogert, that RAM was  
4 causing interference to, to Capitol too, correct?

5 A Yes.

6 Q That's why -- I'm trying to clarify what that  
7 interference was. I mean, was, was RAM --

8 JUDGE CHACHKIN: Well -- you haven't finished your  
9 question.

10 MR. JOYCE: Was --

11 JUDGE CHACHKIN: Go ahead and finish.

12 BY MR. JOYCE:

13 Q Isn't it true that what you're calling RAM's inter-  
14 ference to Capitol was actually RAM's legitimate, legitimate  
15 pages going out over the air?

16 A Well, interfering with those test pages that Capitol  
17 was transmitting.

18 Q Okay. So, what you're saying is interference is  
19 RAM's customers getting pages that happened to be going out on  
20 top of this repeated tone sequence. Is that correct?

21 MR. HARDMAN: I object to the question, Your Honor.  
22 It's not what the record reflects.

23 MR. JOYCE: He's right here and --

24 JUDGE CHACHKIN: I'll permit the question.

25 BY MR. JOYCE:

1 Q Do you need me to repeat the question, Mr. Walker --  
2 Mr. Bogert?

3 A No. I mean, we never observed pages from Capitol  
4 that were going to customers. It was just the test pages.  
5 So, I guess what you stated is true.

6 Q I, I gather that you've inspected paging stations  
7 prior to this one, Mr. Bogert?

8 A Yes.

9 Q Okay. Both RCC and PCP?

10 A That was the first PCP paging I've gotten involved  
11 with.

12 Q Okay.

13 A Now, this is a relatively newer thing. At least,  
14 you know, most of the stuff that I've been involved with was  
15 RCC.

16 Q Okay. You saw RAM's facilities while you were out  
17 there?

18 A We inspected RAM on the 14th of August.

19 Q Okay. Did they appear to be set up to do business?

20 A Yes.

21 Q You inspected Capitol's PCP?

22 A Yes.

23 Q Did they appear to be set up to do business?

24 A The equipment was there and, and operating. I mean,  
25 if they had subscribers or customers, then could have provided

1 service.

2 Q But it didn't look like a very good way of providing  
3 service, did it?

4 MR. HARDMAN: I object, Your Honor.

5 JUDGE CHACHKIN: Sustained.

6 MR. JOYCE: I have no further questions.

7 JUDGE CHACHKIN: Mr. Hardman?

8 CROSS-EXAMINATION

9 BY MR. HARDMAN:

10 Q Mr. Bogert, I want to go back to your testimony  
11 about the, the receiver monitor, and I believe you testified  
12 that it, it appeared that there may be noise in the, in the  
13 receiver. Did I understand you?

14 A Yes. That's correct.

15 Q Now, just to be clear, the, the unit that, that --  
16 inhibitor or receiver unit, whatever you want to call it, had  
17 a speaker on it, did it not?

18 A I believe so, yes.

19 Q And when you say it appeared noisy, that meant you  
20 heard some sort of sound, noisy sound in -- out --

21 A Right. Normally, if you have a good strong signal,  
22 you get full -- what we call full quieting and the audio comes  
23 through clearly and meaning that you're receiving RAM's signal  
24 and pages would have been very clear. And, and what I heard  
25 -- and it varied, I'm not sure why. I mean, we never found

1 out why. But at times the signal that the receiver got from  
2 RAM was noisy, indicating that, that the level -- it should  
3 have basically been about the same all the time, yet, yet it  
4 wasn't. I don't know. Mr. Walker referred to maybe the  
5 antenna connections were -- on the receiver were not right or  
6 the antenna fell off or something, that we never determined  
7 why that was the case.

8 Q Yeah. In fact, you, you never determined whether  
9 the antenna was on or off?

10 A Right. The only thing I know is the signal seemed  
11 to vary, whether it was good quality or, or bad quality in  
12 that receiver.

13 Q Let me ask you this, when I'm at home listening to  
14 an FM radio station playing music, sometimes in the middle of  
15 the song I'll hear some sort of static, and then it, it will  
16 occur for awhile and then it will -- I mean, I'm talking about  
17 maybe a few seconds, and then it will go away and the sound  
18 will continue, you know, the music will continue. Is that  
19 the, the type of noise that you heard?

20 A No. We're not familiar with it. In our vehicles,  
21 for instance, our receivers are connected to the antennas on  
22 the car and they're low-gain antennas, so we typically need  
23 fairly good signals to hear them clearly. And what I was  
24 hearing wasn't, wasn't -- it didn't sound like it was electri-  
25 cal interference or something else getting in. It just

1 | sounded like the signal strength was going down and going up.

2 |       Q     I, I'm confused. I'm sorry. I, I thought you  
3 | talked a moment ago about the receiver in your car.

4 |       A     Right. We hear the same thing as we're driving.  
5 | When you're, when you're in a moving vehicle, you can get  
6 | flutter on a FM signal. And that's when this -- when you're  
7 | driving through the terrain, the signal will go up and down  
8 | and you'll hear flutter. And if it goes down low enough,  
9 | you'll actually hear a (whoosh) noise indicating the signal is  
10 | really very, very low. And if the signal is not there at all,  
11 | then all you hear is like a scratchy sound or something. And  
12 | that was the type of sound that I heard.

13 |       Q     Okay. So, that's, that's what I'm trying to deter-  
14 | mine. Do you -- what, what you heard at Capitol was what I  
15 | believe you now just characterized as a, as a flutter or that  
16 | type of --

17 |       A     Yeah, a noise, noise coming into the receiving  
18 | receiver, probably sounding like just the -- that -- the  
19 | signal that it was trying to listen to was, was getting stron-  
20 | ger or weaker when it, when it would be noisy. And we never,  
21 | we never found out exactly why that was happening.

22 |       Q     But to be clear here, what you're talking about is  
23 | what you interpreted at the time as a variation in, in the  
24 | signal strength --

25 |       A     Of the received signal.

1 Q -- of the received signal --

2 A Right.

3 Q -- at the monitor --

4 A Right.

5 Q -- at the Capitol monitor?

6 A Um-hum.

7 JUDGE CHACHKIN: Is that right? You have to -- you  
8 can't just shake your head.

9 MR. BOGERT: Yes, that's right. I'm --

10 MR. HARDMAN: Okay.

11 (Off the record.)

12 (On the record.)

13 JUDGE CHACHKIN: Go ahead, Mr. Hardman.

14 BY MR. HARDMAN:

15 Q Let me go back a little further. Early on in your  
16 testimony when you were describing a -- the types of pages  
17 that you heard from Capitol, I believe you said that the same  
18 numbers were being paged. Do you recall that?

19 A Right. Yes, I did.

20 Q I would like to clarify what you mean by "numbers."

21 A Well -- go ahead and finish.

22 Q The, the number could refer to a telephone number of  
23 the party placing the page that wants that wants the receiver  
24 to call back. Was that the type of number you were talking  
25 about?

1           A     No, just the tones that were being transmitted from  
2 the paging transmitter that would actuate a particular pager  
3 assigned to a, a customer or to a person, whoever has it.

4           Q     Are, are you familiar with the term "two-tone  
5 sequential"?

6           A     Yes.

7           Q     And would you say that was the type of, of, of  
8 number or tone that you heard?

9           A     Yeah, that appeared to be what was being  
10 transmitted.

11          Q     The, the test pages were two-tone sequential pages?

12          A     I believe so, yes.

13          Q     Okay. And would you explain to the Court what  
14 purpose the two-tone sequence serves in the paging function?

15          A     In the pager is a decoder that responds to whatever  
16 tones are sent. So, that if, if I had a pager with a certain  
17 code in it, that it wouldn't receive everybody's page. But if  
18 one was directed to me, if, you know, someone called in to  
19 page me, that the paging terminal would send the sequence for  
20 that particular pager to actuate it, and typically what hap-  
21 pens then is the audio is opened up and if there's a message  
22 the person leaves, then they would hear the message.

23          Q     Are you familiar with the term "front porch" in this  
24 context?

25          A     Well, no.

1 Q All right. Would, would it be fair to say that the,  
2 the two-tone sequence is the key to a pager receiving a voice  
3 message or that, that -- the digital telephone number that's  
4 displayed after that?

5 A Yeah, I think so.

6 Q So, that if the pager doesn't receive or hear that  
7 two-tone and unlock so that the subsequent voice message or  
8 digital display information is allowed into the receiver unit,  
9 the page is never received, is it?

10 A No. If it doesn't get that sequence, the key to  
11 turn it on, then the user or whoever has the pager gets no  
12 indication that they had a message or a page.

13 Q So, if, if a company wants to test the reliability  
14 of its paging system, it would use these types of tones to do  
15 so?

16 A Yes. That's correct.

17 Q And you have no question in your mind, have you,  
18 that these were legitimate paging tones that were being  
19 transmitted?

20 A I didn't have a question that they were legitimate  
21 tones. I was -- you know, I wondered why it was the same  
22 tones over and over, and then I figured that it was probably  
23 testing going on.

24 Q Did you ask anyone at Capitol why they were doing  
25 the tones in sequence?

1           A     When we originally went in to do the inspection, as  
2 Mr. Walker said, the original explanation was testing the link  
3 transmitter. And, then, the subject that it was really relat-  
4 ed to doing testing for coverage was, was mentioned next.

5           Q     Well, Mr. Walker -- and you were here when he  
6 testified, were you not?

7           A     Yes.

8           Q     As, as I recall, the -- Mr. Walker asked the ques-  
9 tion of Mr. Stone at Capitol why the testing. Is that what  
10 you're referring to?

11          A     Yes.

12          Q     I don't believe the record reflects a question: why  
13 are you using three tones in sequence. Is it your testimony  
14 that, that this question was asked of Mr. Stone?

15          A     The question of that part of it came up when we were  
16 trying to get into the actual paging terminal to see what was  
17 making those particular four numbers, that, that particular  
18 sequence, occur. That -- you know, because we were inter-  
19 ested, obviously, why that was going on and we wanted to find  
20 out how it was being done, because it seemed to go on days,  
21 nights, at all times, even when no one was -- when the office  
22 was closed. And, yeah, we were curious, you know, how that  
23 was being accomplished from the paging terminal.

24          Q     Okay. I understand that, that you were curious as  
25 to how it was being accomplished, but I believe my question

1 was did you clearly ask someone at Capitol why it was being  
2 accomplished?

3 A That was when we had asked the reason for the pages  
4 that we were hearing, which was related to what Mr. Walker  
5 said, you know, why is all this testing --

6 Q All right. So --

7 A -- being done.

8 Q So that I correctly understand, the, the, the  
9 questions relating to why the testing were the ones that were  
10 asked Mr. Stone which Mr. Walker testified about yesterday?  
11 That's -- is that right?

12 A Yeah, that's basically correct, yes.

13 Q You also were asked some questions by Mr. Joyce  
14 about interference from Capitol to RAM and vice versa. And as  
15 I understand your testimony, when you use the term "interfer-  
16 ence," you're talking about actual simultaneous transmission  
17 or, to use a colloquial expression, someone transmitting on  
18 top of somebody else who's already transmitting. Is that  
19 right?

20 A That is, I guess, part of what we consider to be  
21 harmful interference.

22 Q Well --

23 A I don't think that's a --

24 Q I --

25 A -- complete --

1           Q     I don't believe -- I'm sorry. I, I, I don't believe  
2 my question was what you consider harmful interference. My  
3 question was directed to your testimony in response to  
4 questions asked by Mr. Joyce which had to do specifically with  
5 your conclusion that Capitol interfered with RAM and RAM  
6 interfered with Capitol.

7           A     Right. That -- his question did relate particularly  
8 to the times when both transmitters were on the air at the  
9 same time.

10          Q     And that is the only type of interference you  
11 observed during your monitoring, isn't that right?

12          A     I don't know that I would consider that's the only  
13 type of interference. When we investigate interference  
14 complaints --

15          Q     Excuse me.

16               MR. JOYCE: You're interrupting the, the witness --

17               MR. HARDMAN: Well --

18               MR. JOYCE: -- Mr. Hardman, with all due respect.

19               MR. HARDMAN: The witness answered the, the question  
20 and there was no pending question to elicit the additional  
21 information.

22               MR. JOYCE: He hasn't completed his answer.

23               JUDGE CHACHKIN: Well, if it was responsive to Mr.  
24 Hardman's question, that's the end of it. Of course, it can  
25 be brought up on redirect if you want a further explanation.

1 So, I'll strike the, the rest of the answer.

2 MR. HARDMAN: Thank you, Your Honor.

3 JUDGE CHACHKIN: Go ahead, Mr. Hardman.

4 BY MR. HARDMAN:

5 Q Now, in response to questions from Ms. Foelak, you  
6 testified that after you started inspecting the test paging  
7 stopped and then you did not observe that again.

8 A Yes, that's correct.

9 Q Your, your testimony, in fact, is when the inspec-  
10 tion started the testing stopped and that was it. Is that  
11 correct?

12 A Yes.

13 Q On the question of the Morse Code, I'm unclear about  
14 your testimony concerning the communications with someone  
15 about the dip switch setting relating to the speed of the  
16 Morse Code?

17 A Okay. When the subject was brought up, there was a  
18 particular board in the unit that contained the -- a little  
19 dip switch that controlled the Morse Code speed, and you could  
20 set it from that dip switch to be slow or to be fast. And I  
21 assumed that the reason it was slow was because that switch  
22 was set to slow, but yet when I looked at it I wasn't sure,  
23 not having a manual for that particular board, how the switch-  
24 es were supposed to be set to get the, the speed to change.  
25 And at that point, someone called the manufacturer and I got

1 on the phone with them. And I, I don't recall who it was I  
2 spoke with, but someone from Capitol got them on the phone.  
3 And I guess I was still a little confused, because what I  
4 thought they were telling me, it looked at the time, from what  
5 they were saying, that the switches were set for fast speed,  
6 but yet clearly, if you listened to the station over the air,  
7 you would know right away that the speed was very, very slow.

8 Q Well, just so that I understand, as, as a result of  
9 your conversation with someone at the, at the manufacturer,  
10 your understanding was that the dip switches that controlled  
11 the speed of the identification were set to the fast speed.  
12 Isn't that right?

13 A I was never really sure, because I didn't know if,  
14 the way the board was in, if I was looking at that switch --  
15 you know, all these switches are only on or off and it's a  
16 segment of, you know, six or eight or whatever, and I don't  
17 recall how many was on that one. But if you look at it -- if  
18 the board is in upside down from the way they were talking, I  
19 never really determined that. So, I left it as there's a  
20 problem here that needs to be fixed, because I, I wasn't  
21 really certain why it was transmitting at the improper speed.  
22 I think there was a response I looked at the following July,  
23 that they simply reset the switches and the speed went cor-  
24 rect, which may indicate I was looking at it wrong. But I was  
25 never really comfortable with, with saying yes, those are not

1 set right or not, so I just left it as the speed is incorrect,  
2 you need to find out why and fix it.

3 Q Well, did -- isn't it true, after you spoke to the  
4 representative at the factory, that you said to Capitol per-  
5 sonnel that the settings seemed right or something to that  
6 effect?

7 A I said according to what I was just told. And  
8 looking at it, it appeared, if, if I was hearing correctly,  
9 that the settings may have been what they said they should be  
10 from the factory.

11 Q All right.

12 A But, you know, I said there was -- something is  
13 wrong.

14 Q Okay. So, not to, to beat the subject to death, but  
15 your ears were telling you one thing when you listened to the  
16 speed -- and one ear was telling you one thing when you  
17 listened to the speed of the Morse Code and one ear was tell-  
18 ing you something else when you were listening to the informa-  
19 tion from the manufacturer about the --

20 A Right.

21 Q -- setting. Is that right?

22 A Yes.

23 JUDGE CHACHKIN: We'll take a ten-minute break.

24 (Whereupon, a brief recess was taken from 11:05 a.m.  
25 until 11:45 a.m.)

1 JUDGE CHACHKIN: Please be seated. Mr. Hardman?

2 MR. HARDMAN: I have no more questions at this time,  
3 Your Honor.

4 JUDGE CHACHKIN: Any redirect?

5 MS. FOELAK: Yes.

6 REDIRECT EXAMINATION

7 BY MS. FOELAK:

8 Q In reference that -- Capitol's busy monitor, wasn't  
9 it -- it's office in Charleston?

10 A Yes.

11 Q You testified that at one point you went back out to  
12 the car and listened to the frequency. Could you hear RAM  
13 clearly when you were in the car in the parking lot there?

14 A In the vehicle, yes. We had a pretty strong signal,  
15 very strong signal.

16 Q And you testified that the antenna in the car was  
17 low gain. Does that mean really good or not really good, as  
18 far as --

19 A Not really good.

20 Q Okay.

21 A We have preamplifiers that we turn on to compensate  
22 for it, which brings it up from not really good to average.

23 Q Okay. Also, at the time that you went back out to  
24 the car, what had been going out -- excuse me -- what had been  
25 going on inside before you went back out to the car?

1           A     Well, we had introduced ourselves and explained that  
2 we were there to inspect the, the Private Carrier Paging  
3 System, and started to get back to see where the terminal was  
4 at and to start accessing the terminal to find out how it was  
5 programmed and, and where the pages were being sent out on.  
6 So, we were into the inspection for awhile.

7           Q     And what was it that -- what was happening or not  
8 happening that, that caused you to leave the office and go  
9 back out?

10          A     Oh, the -- the test pages suddenly quit and then --

11          Q     On the terminal?

12          A     Yeah, on the terminal, and we just wanted to verify  
13 that something just wasn't wrong, that we were looking at the  
14 terminal. So, I went back out just to verify that off the air  
15 the, the actual pages were not being sent.

16          Q     All right. This question has been discussed at  
17 length, but I'll ask it again. Were there instances when you  
18 were monitoring during the week when RAM was transmitting and  
19 Capitol came up on top of RAM?

20          A     Yes.

21                MS. FOELAK: That's all I have, thank you.

22                JUDGE CHACHKIN: Any further questions of the  
23 witness?

24                (No audible response.)

25                JUDGE CHACHKIN: You're excused. Thank you, Mr.

1 Bogert.

2 MR. BOGERT: Okay. Thank you.

3 JUDGE CHACHKIN: Who's the next witness?

4 MS. LADEN: Your Honor, we'd like to call Dale  
5 Capehart, who is with RAM Technologies.

6 JUDGE CHACHKIN: Is he here? Oh, we have to go get  
7 him? We'll go off the record for the next witness.

8 (Off the record.)

9 (On the record.)

10 JUDGE CHACHKIN: Would you rise for a minute,  
11 please, sir?

12 MR. CAPEHART: Yes, sir.

13 JUDGE CHACHKIN: Raise your right hand. Please be  
14 seated and state your name and residence address, please?

15 MR. CAPEHART: My name is Dale Capehart. That's  
16 Allen Dale Capehart and I live in Kenova, West Virginia, at  
17 Number 1, Capehart Circle.

18 Whereupon,

19 A. DALE CAPEHART

20 having first been duly sworn, was called as a witness herein  
21 and was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LADEN:

24 Q Good morning, Mr. Capehart. I'm Paulette Laden.

25 I'm representing the Chief of the Private Radio Bureau and I'd

1 like to ask you some questions.

2 A Paulette, I can just barely hear you. I, I'm sorry.

3 Q Okay. I'd like to ask you some questions. Where  
4 are you employed, Mr. Capehart?

5 A RAM Technologies, Incorporated.

6 Q How long have you been there?

7 A Eight years in March.

8 Q And what's your title?

9 A I'm Corporate Vice President.

10 Q Have you always been the Corporate Vice President?

11 A No. I started out as a telephone salesman, worked  
12 my way up through various positions to where I am now.

13 Q And what are your duties as Corporate Vice  
14 President?

15 A At present?

16 Q Yes.

17 A I'm over a Technical Equipment Sales Team and  
18 Marketing Group at the present time.

19 Q Had you been in the paging business before you went  
20 with RAM Technologies?

21 A No.

22 Q Since you've been with RAM Technologies do you have  
23 any experience with sharing private -- sharing paging frequen-  
24 cies with other companies?

25 A Yes.

1 Q And could you tell us how that sharing of frequen-  
2 cies works?

3 A Are you referring to people who want to operate on  
4 the same frequency in a given area?

5 Q That's exactly what I'm talking about.

6 A Okay. Most generally, the way that you do that is  
7 -- the most effective way is to wire line connect your termi-  
8 nals together so that there are not any collisions. With an  
9 air line -- with, with a air -- with a monitoring system that  
10 doesn't have the phone wire connection, there can be times  
11 when both systems come up at once. And with the wire line  
12 connection, it's -- there are, there are fewer parameters to  
13 cause problems.

14 Q Now, this use of shared frequencies is not uncommon  
15 in the paging --

16 A No, ma'am. We are currently sharing in that manner  
17 with the University of Kentucky Hospital in Lexington,  
18 Kentucky, and we have been sharing there with them for approx-  
19 imately two years now with no problems, really, and, and we're  
20 doing that off the air. We're not even doing that wire line.

21 Q In your experience, are there a lot of problems with  
22 sharing frequencies?

23 A We have had no problem with the University of  
24 Kentucky in Lexington, and we also had no problem when we went  
25 on the air on 152.480 megahertz in Ashland, Kentucky, with

1 Ashland Oil, Incorporated. They have a -- they had a paging  
2 system, a private paging system, in Ashland, Kentucky, and we  
3 shared with them for quite some time before they decided to  
4 move to a different frequency.

5 Q No problems with that?

6 A No. We had no problem with them, and we currently  
7 have no problem with sharing a system in Lexington.

8 Q Now, there came a time when you shared a frequency  
9 with Capitol?

10 A Yes, ma'am.

11 Q Did you have any problems with that?

12 A Immediately.

13 Q Now, when, when did the problems first begin?

14 A The problems first began after -- shortly after they  
15 had put their transmitter on the air. We experienced problems  
16 with them transmitting over the top of our pages. They were  
17 transmitting their call sign.

18 Q How do you know that it was Capitol?

19 A I had our -- one of our engineers -- the Morse Code  
20 ID, I had one of our engineers decipher the Morse Code  
21 identification.

22 MR. HARDMAN: I object, Your Honor, and move to  
23 strike. This, this witness didn't do any decoding of that.

24 MR. JOYCE: Goes to knowledge, Your Honor. I don't  
25 see how that's hearsay at all.

1 JUDGE CHACHKIN: Well, if, if you establish that,  
2 that he -- this person did it under his direction and control,  
3 I'll permit the question.

4 BY MS. LADEN:

5 Q The employee that verified the Morse Code, did that  
6 person do so at your direction?

7 A Yes, he did.

8 Q And reported back to you?

9 A Yes.

10 Q Now, when was it that Capitol first start -- that  
11 you first started having these problem? Do you remember the,  
12 the month and year?

13 A I think it was March the 4th of '91. That was a  
14 Monday, if I remember correctly. And we had been -- I had  
15 personally talked to some of our customers who had said that  
16 there were Capitol paging sales people who had visited with  
17 them who stated that we would start having trouble soon with  
18 our paging system.

19 MR. HARDMAN: I object, Your Honor. That's hearsay.  
20 Attributing statements to third parties that --

21 JUDGE CHACHKIN: I'll sustain the objection to any  
22 conversations with -- when with a third party here on the  
23 grounds of hearsay. If you want to offer a state of, a state  
24 of his mind, state of mind, that's different, but the truth of  
25 whether or not this was true or not is, is -- he can't --

1 that, that would be hearsay.

2 BY MS. LADEN:

3 Q When you first started having problems, did you  
4 contact anyone at Capitol?

5 A Yes. I contacted someone at Capitol.

6 Q When would that have been?

7 A That would have been on March the 4th, I think,  
8 also, right close to that date.

9 Q And who did you contact?

10 A I contacted Mr. Mike Raymonds.

11 Q And what did you say to him?

12 A I told him that his transmitter was transmitting  
13 over the top of our pages, was transmitting their call sign  
14 over the top of our pages, and that I wanted him to fix that  
15 situation, that we were losing pages because of that.

16 Q And what did he say?

17 A He said he would try and get someone down there to  
18 work on it that day. And I said that, that he needed to get  
19 someone down there that day to fix it.

20 Q And was it fixed?

21 A I think that later on that evening it did stop.

22 Q And when did you next experience a problem with --

23 A The next --

24 Q -- Capitol?

25 A -- problem we experienced, and I don't remember the

1 exact date, but we had a problem with them retransmitting  
2 their pages from their RCC channel, which is 152.510 mega-  
3 hertz. They were dumping the pages that had -- that were sent  
4 on their RCC channel, they were paralleling those and trans-  
5 mitting them at the same time on the 152.480 frequency.

6 MR. HARDMAN: Your Honor, I'm going to object again.  
7 The witness has gone far beyond describing what he saw or  
8 heard but has attributed conduct to Capitol for which there is  
9 no foundation.

10 JUDGE CHACHKIN: Let me hear the question and  
11 answer, please.

12 (Whereupon, the question and answer were played  
13 back.)

14 REPORTER: On the record.

15 JUDGE CHACHKIN: Yes. I will allow the testimony as  
16 to his problem. But his attributing the problem to what  
17 Capitol is doing or not doing, there's no foundation for that  
18 and I'll sustain the objection and strike that portion of it.

19 MS. LADEN: Your Honor, may I inquire as to how he  
20 determined that it was Capitol -- what Capitol --

21 JUDGE CHACHKIN: Well, he was describing supposedly  
22 what Capitol was doing.

23 MS. LADEN: Yes. I'd like to inquire as to how he  
24 determined what Capitol was doing.

25 JUDGE CHACHKIN: Well, you first better lay a